

1
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO. 825 OF 2004
IN
SUIT NO. 3208 OF 2001

Nilkamal Plastic Ltd., .. Plaintiff
vs.
Sapatshringimata Milk and
Allied Products Pvt. Ltd.,
& Anr. .. Defendants.

Mr. K.S. Shetty for plaintiff.
Mr. C.N. Chavan for defendant no. 2.
Mr. R.D. Suryavanshi a/w S.M. Sabrad
for defendant no.1.

CORAM : S.U.KAMDAR, J.

DATE : 19th OCTOBER, 2005.

P.C.

. The present suit is filed by the plaintiff for the recovery of a sum of Rs. 1,13,446/- inclusive of the principal amount of Rs. 85,061 and interest of Rs. 28,385/- The said claim arises out of the goods sold and delivered by the plaintiff being the plastic crates to the defendants. By letter dated 10.5.2000 the defendant no. 2 placed

an order with the plaintiffs for the supply of the said goods with a direction that the said goods to be delivered to the defendant no. 1 and that the payment to be received from the defendant no. 1. It is not disputed by the 1st defendant that pursuant to the said letter dated 10.5.2000 the defendant no. 1 has received the said goods. However, the defendant no. 1 is contending that they are not liable to make the payment because the price of the said goods has been paid by them to the defendant no. 2 and therefore they are liable to make the payment. In support of the aforesaid contention the learned counsel has contended that the quotation in respect of the erection of the plant by the 2nd defendant included the supply of crates to the 1st defendant and therefore it is the 2nd defendant who is liable to make payments for the said crates. He has also relied upon page no. 8 of the additional affidavit in support thereof in support of the aforesaid contention. This page no. 8 of the additional affidavit contain three sheets of papers without any quotation being annexed thereto. I have perused the original quotation which has been placed before me by the defendant no. 2 which inter alia do not contain any such sheet of paper on which reliance has been placed by the defendant no. 1. Apart therefrom, I find that the accounts are not produced by the defendant no. 1 though called upon to show that they have made

payments to the defendant no. 2 in respect of this supply. However typed copy of the ledger accounts is produced duly certified by the Chartered Accountant. When I called upon the defendant no. 1 to produce the proof of payment of Rs. 85,061/- through the bank account or the pass book of the bank, he is unable to produce the same. In that view of the matter, I am of the opinion that the case put forth by the 1st defendant that the amount is paid to the 2nd defendant in respect of the said crates cannot be accepted. In so far as the plaintiff is concerned, there is no dispute that he has not received the amount. In that view of the matter, I direct the defendant no. 1 to deposit a sum of Rs. 1 lac in this Court within a period of four weeks from today failing which the plaintiff will be entitled to decree. As against defendant no. 2, there shall be an unconditional leave to defend. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgment disposed of accordingly.

2. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit.

Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.